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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.     | CONFIRMATION NO. |
|---|-------------|----------------------|-------------------------|------------------|
| 10/046,948  | 01/14/2002  | Tom L. Tomlin        | TOMT101                 | 4420             |
| 7590  | 01/12/2005  |                      | EXAMINER                |                  |
| STEVEN M NIPPER<br>DYKAS SHAVER & NIPPER LLP<br>PO BOX 877<br>BOISE, ID 83701 |             |                      | BAXTER, GWENDOLYN WRENN |                  |
|   |             |                      | ART UNIT                | PAPER NUMBER     |
|   |             |                      | 3632                    |                  |

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/046,948

Applicant(s)

TOMLIN, TOM L.

Examiner

Gwendolyn Baxter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on 03 March 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other. \_\_\_\_\_

This is the second Office Action for application number 10/046,948, Trash Bag Support and Liner, filed January 14, 2002. Claims 1-4 are pending.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No.

5,716,033 to Gibson. The present invention reads on Gibson teaches a trash bag support and liner (2) comprising a single, generally rectangular piece of plastic (col. 3, line 56-60) and a temporary locking mechanism (8-12). The temporary locking mechanism is configured to be engaged for holding the bag support and liner. The locking mechanism comprises a tab (near 11) integral with the single piece of plastic and a cooperating open slit (8) in the single piece of plastic. The locking mechanism tab is configured to be disengaged from the slit thereby releasing the bag support and liner from the set cylindrical position after the bag is installed upon the bag support and liner. See figures 3-5, col. 4, lines 25+.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibson in view of U.S. Patent No. 6,065,512 to Munn, II. Gibson teaches the limitations of the base claim, excluding a hand hole near two edges of the piece of plastic.

Munn teaches a trash bag support and liner comprising a single generally rectangular piece of plastic (10) having hand holes (22, 24) near two edges of the piece of plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the trash bag support and liner as taught by Gibson to have incorporated the hand holes for the purpose of receiving the hand of the user for grasping the edge portion to bring the edge in proximity with the other to bend the panel for insertion into the receptacle.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gibson in view of U.S. Patent No. 3,983,914 to Benson. Gibson teaches the limitations of the base claim, excluding the cooperating slit being near the center of the piece of plastic.

Benson teaches a temporary locking mechanism for holding the bas support in a cylindrical position comprising integral tabs (5) near an edge of the piece of plastic (see figure 1) and cooperating silts (3) in the piece of plastic, several of the slits are located near the center of the piece of plastic (see figure 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the slot as taught by Gibson to have incorporated the teaching of the location of the slot as taught by Benson for the purpose of changing the diameter of the liner when in the insertion position for the purpose of being

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inserted into a bag having a relatively small diameter . Additionally, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the slot to have incorporated the location of the slot, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-4 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

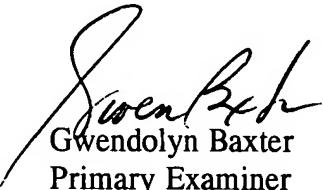
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gwendolyn Baxter whose telephone number is 703-308-0702. The examiner can normally be reached on Monday-Wednesday, 8:00am -5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A Braun can be reached on 703-308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gwendolyn Baxter  
Primary Examiner  
Art Unit 3632

January 3, 2005